

Internal Revenue Service
District Director

Department of the Treasury
1100 Commerce Street
Dallas, TX 75242-0000

[REDACTED]
[REDACTED]
[REDACTED]
Employer Identification Number:

[REDACTED]
Person to Contact:

[REDACTED]
Telephone Number:

[REDACTED]
In Reply, Refer to:

Date: OCT 26 1999

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

The information submitted discloses that you were incorporated on [REDACTED] under [REDACTED]

Your purpose as stated in your Articles of Incorporation is, in part, "to give poor individuals job training in rehabilitating buildings in their neighborhoods".

Your activity to date has been the renting of one property that is owned by the [REDACTED] of your corporation, [REDACTED], to a Section 8 tenant. You state your primary goal is to rehabilitate homes in low-income areas, primarily the south area of [REDACTED]. You intend to provide rental housing to low income families with an opportunity for these families to purchase the home. You state your secondary goal is to provide training in the field of home rehabilitation. Other than the renting of property to a tenant under Section 8 provisions, all your other activities are proposed future activities. For this reason, you were asked extensive questions by our office to determine exactly how you were going to carry out your program.

In our first developmental letter dated [REDACTED], you were asked many questions in order to better ascertain your charitable program. Among these questions, you were asked to provide detailed information on the following:

- a) How you meet the safe harbor requirements of Revenue Procedure 96-32 with respect to low-income housing.
- b) How payments made for interest payments, depreciation, repairs, and insurance for the last two years contributes to your exempt function.
- c) What the depreciable asset is of \$[REDACTED] and copies of notes and mortgages payable shown on your balance sheet as liabilities.
- d) What your activities have been in chronological order since your creation in [REDACTED].
- e) Whether you have any liaisons with social service agencies in your area to screen or identify applicants for your job-training program.

In your response dated [REDACTED], you supplied the following information:

- a) You did not indicate specifically how you meet Revenue Procedure 96-32. You stated that you are similar to those organizations described in examples 1 and 3 in section 5 of the Revenue Procedure. You did not provide any further clarification.
- b) All the expenses listed are for property owned by the [REDACTED] of this organization, [REDACTED] paid the principal on the mortgage payable. Your organization paid the mortgage interest, real estate taxes, hazard insurance, material and labor costs, and business license fees for this property. You also took depreciation expense for the property although your organization does not own the property.
- c) The depreciable asset of \$[REDACTED] shown on your balance sheet is the value of the property that is owned by [REDACTED].
- d) The bulk of your activities to date have been the rehabilitation of the property purchased and owned by [REDACTED]. Several tenants renting this house have apparently been Section 8 recipients.
- e) You stated that you are in the process of completing the set-up for the job-training program. Your activity now is listing available rental properties with the [REDACTED] and then renting to their clients. In essence, this means you are renting one house that is owned by [REDACTED] to a Section 8 client.

In our second developmental letter to your organization dated [REDACTED], you were asked to provide detailed information about the following:

- a) Why the organization picked up the expenses of interest payments, depreciation, repairs, and insurance for the last two years on the property that is apparently owned by [REDACTED].
- b) Who receive the rental revenue of \$[REDACTED] per month (as stated in the [REDACTED]). The organization is not showing these amounts as revenue.
- c) When, where, what and how the training program will get off the ground.

In your response dated [REDACTED], you supplied the following information:

- a) You did not explain why the organization picked up expenses of the building owned by [REDACTED]. You stated that depreciation is a "standard deduction". This is true. The question remains as to exactly why your organization is claiming deductions that really belong to [REDACTED]. Your [REDACTED] stated that, "Currently a Section 8 tenant is renting [REDACTED], however, we do not intend for that to be our 'charitable activity'".
- b) run a real estate company. Three years ago I decided to start a non-profit company that will operate as a 'normal' rental real estate (profit) company. The only difference between the two is that all profits, equity, and monies put into the property to rehab the building, will go into a charitable cause, in which I will control where I put the money."

- c) Your [REDACTED], [REDACTED] stated that, "...purchasing more property to bring up the income of the company to enable me to employ and train workers to rehab buildings. The company first must be able to generate an income in order for me to do this. Once the income level is to a point where I can do both, grow, and donate to the community in terms of employment, training, beautification, rehabbing, and selling to under qualified families, the charitable contributions will be of many different forms." He also stated, "This company is at the beginning stage and obviously, training will begin with me. Eventually it will grow to will grow to include other employees. During and in the end, all profits, equity, and any other income generated from the company will go into charitable causes."

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1 of the Tax Regulations relates to the definition of the organization and operation of organizations described in section 501(c)(3). It is quoted, in part, as follows:

"(a) Organizational and operational tests. (1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either test, it is not exempt. (2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in section 501(c)(3)...."

"(b) Operational test. (1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals..."

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more purposes specified in that section. If an organization fails to meet either the organizational or the operational test it is not exempt.

Section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations provides that "an organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or person controlled, directly or indirectly, by such private interests.

We also wish to direct your attention to Revenue Procedure 90-27 1990 1C.B. 514, which reads, in part, as follows:

"Section 5. Exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purpose or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities; the anticipated sources of receipts; and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling, or determination letter will be considered an adverse determination from which administrative appeal rights will be afforded..."

Since your organization has been unable to provide a concrete, detailed description of your proposed activities, funding and expenses, this office is unable to make a determination as to your qualifications as an organization described in section 501(c)(3) of the Internal Revenue Code. Under the authority of the above mentioned revenue procedure, it is held that a record of actual operations will be required before a ruling or determination will be issued.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under section 501(c)(3) of the Code, since you are not organized and operated exclusively for charitable, religious, or other exempt purposes within the meaning of section 501(c)(3).

You are required to file Federal Income Tax Returns.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with these conclusions, you may within thirty days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after you have submitted your brief to the Dallas Office and we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or other decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claim, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Please keep this determination letter in your permanent records.

If you agree with this determination, please sign and return the enclosed Form 6018.

If we do not hear from you within 30 days from the date of this letter, this determination will become final. In accordance with Code Section 6104(c), we will notify the appropriate State officials of this action.

Sincerely yours,

Ladd Ellis Jr
Ladd Ellis, Jr.
District Director

Enclosures:
Publication 892
Form 6018